

Application No. 10/750,608  
Amendment Dated August 29, 2007  
Reply to Office Action of June 6, 2007

**REMARKS**

Applicants respectfully request further examination and reconsideration in view of the above amendments and the arguments set forth fully below. In the Office Action mailed June 5, 2007, claims 1-42 have been rejected. In response, the Applicants have submitted the following remarks, executed the attached terminal disclaimer and amended claims 1 and 23. Accordingly, claims 1-42 are still pending. Favorable reconsideration is respectfully requested in view of the amended claims and the remarks below.

**Double Patenting**

Claims 1, 3, 9, 11, 16, 20-21, 25-27, 31-32, 34, 39 and 40-41 are provisionally rejected on the ground of non-statutory obviousness/type double patenting as being unpatentable over specific claims of co-pending Application No. 10/750,493 (hereinafter '493 application). It is stated within the Office Action that although the conflicting claims are not identical, they are not patentably distinct from each other.

In response, the Applicants have submitted the attached timely filed terminal disclaimer in compliance with 37 C.F.R. §1.321(c) to overcome the provisional rejection as the conflicting application is commonly owned with the present application. Therefore, the Applicants respectfully request that the provisional double patenting rejection with respect to claims 1, 3, 9, 11, 16, 20-21, 25-27, 31-32, 34, 39 and 40-41 be withdrawn.

**Rejections Under 35 U.S.C. §112**

Claim 23 has been rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention as it is stated within the Office Action that it is not clearly shown how “one of control a wireless phone coupled to the portable electronic device.” By the above amendment, the Applicants have amended claim 23 to particularly point out and distinctly claim the subject matter as the Applicant regards as the invention,

by clarifying the language of the claim. Accordingly, the Applicants respectfully request that the rejection under 35 U.S.C. §112, second paragraph, be withdrawn.

Rejections Under 35 U.S.C. §103

Claims 1-42 have been rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,6264,614 to Albert et al. (hereinafter Albert), in view of U.S. Patent No. 5,997,476 to Brown (hereinafter Brown). The Office Action indicates that the Albert et al. reference was cited in the IDS filed by the Applicant on December 2, 2004. Because there were four Albert et al. references cited in that IDS, the Applicant's representative contacted the Examiner to inquire as to the specific Albert et al. reference used as the basis for this rejection. The Examiner indicated in a telephone conference of August 20, 2007 that the Albert reference listed above was the appropriate reference for the rejection. Based on this information, the Applicants respectfully disagree with this rejection.

The Albert reference discloses a system for generating and transferring medical data, wherein the computer site includes a data generating source, the generating source including a device which may be manipulated by a patient to sense a biological function or condition such as a heartbeat.

The device outputs an audible signal in response to the monitored condition, and the electronic signal generated in response to the audible signal is received through a microphone connected to a computer. The computer sends the resulting data signals over a network, and any number of patients that acts as the computer communications network can provide real time information about their personal medical condition to their personal medical care providers (Albert, abstract). In short, the Albert reference merely teaches the ability for a patient to utilize a microphone to receive an audible signal provided by a sensor, and with the microphone, converting the audible signal to an analog electrical signal, for distribution through the disclosed computer system. A perfect example of this system and method is shown in Figures 7 and 8 of Albert, respectively.

Referring to Figure 7, the sensor 8 in this case includes ECG electrodes 30 an amplifier 32 and a voltage to frequency converter 34, as well as a speaker 36 for generating an audible signal for the microphone 14 the microphone relays the audible signal to the personal computer 16 where an analog to digital converter 40 converts the signal so that the microprocessor circuit 42 may provide it for the user interface embodied by the mouse 44, keyboard 46, and the display 48 or distributed over the internet connection 50. Referring to Figure 8, the sensor provides an acoustical signal in step 8, and the microphone converts the acoustical signal to the analog electrical signal in step 14. The personal computer with the analog to digital converter system operating software web browser and memory download control and record/display receives the signal in step 16 and is configured to transmit it over the internet in 6b.

The Albert reference does not teach a system and method configured to receive a notification message indicating that a patient being monitored may have a condition that requires attention and wirelessly transferring the notification message to the portable electronic device, which in turn is configured to transmit this notification message as well as an audio signal to a second portable device. In short, the Albert reference does not teach a portable device to receive notification messages from a medical monitoring system, and in turn facilitate transfer of voice data to the audio signal output of the same portable electronic device and from the audio signal input by way of a wireless transceiver. Rather, the Albert reference teaches a microphone configured to receive an acoustical signal from a sensor and convert the acoustical signal to an analog electrical signal for distribution over a network.

The Brown reference teaches a network system for interactive communication and remote monitoring of individuals, wherein a script program is received and executed by the apparatus to communicate queries to an individual to receive responses to the queries, and to transmit the responses from the apparatus to the server. While the Brown reference does indeed teach voice data transmission, the Brown reference also does not

teach the functionality of the processing circuit as described and claimed in the present invention.

As discussed above, in contrast to the teachings of Alpert, Brown and their combination, the system and method of the present application includes a portable device that is configured to receive notification messages from a patient monitoring system, and communication not only that notification message, but also an accompanying voice message from the user of the first portable device to a second portable device or other system. The system and method of the present application facilitates a voice communication between the first portable device and the second portable device, and the portable device and system may further be configured to forward other data from the first portable device to the second portable device such as data associated with the notification message being displayed on one of the devices (present invention, abstract).

The independent claim 1 is directed to a portable electronic device for use in a medical monitoring system of a health care facility the medical monitoring system generating notification messages indicating that a patient being monitored may have a condition that requires attention and wirelessly transfers the notification messages to the portable electronic device, the portable electronic device comprising: an audio signal input device; an audio signal output device; a wireless transceiver; and a processing circuit configured to receive the notification messages indicating that the patient being monitored may have a condition that requires attention and to facilitate transfer of voice data to the audio signal output and from the audio signal input by way of the wireless transceiver. As discussed above, neither Albert, Brown, nor their combination teach a processing circuit configured to receive the notification messages indicating that the patient being monitored may have a condition that requires attention and to facilitate transfer voice data to the audio signal output from the audio signal input by way of the wireless transceiver. For at least these reasons, the independent claim 1 is allowable over the teachings of Albert, Brown and their combination.

Application No. 10/750,608  
Amendment Dated August 29, 2007  
Reply to Office Action of June 6, 2007

The Applicants respectfully submit that the independent claims 11, 25 and 40 are also allowable over the teachings of Albert and Brown for the same reasons as discussed above with respect to the independent claim 1.

Claims 2-10, 12-24, 26-29 and 41-42 are dependent upon the independent claims 1, 11, 25 and 40. As discussed above, the independent claims 1, 11, 25 and 40 are allowable over the teachings of Albert, Brown and their combination. Accordingly, claims 2-10, 12-24, 26-39, and 41-42 are also allowable as being dependant upon an allowable base claim.

For these reasons, Applicants respectfully submit that all of the claims are now in a condition for allowance, and allowance at an early date would be appreciated. Should the Examiner have any questions or comments, they are encouraged to call the undersigned at 414-271-7590 to discuss the same so that any outstanding issues can be expeditiously resolved.

Respectfully submitted,

ANDRUS, SCEALES, STARKE & SAWALL, LLP

By   
Christopher M. Scherer  
Reg. No. 50,655

Andrus, Sceales, Starke & Sawall, LLP  
100 East Wisconsin Avenue, Suite 1100  
Milwaukee, Wisconsin 53202  
Telephone: (414) 271-7590  
Facsimile: (414) 271-5770